

RHONDA HAYWOOD
Claimant

UNITED PARCEL SERVICE
Respondent

LIBERTY MUTUAL INSURANCE COMPANY
Insurance Carrier

Docket No. 214,870

This matter was settled by a running award on October 29, 1998. As part of the award, claimant was granted ongoing medical treatment, with respondent's attorney agreeing that Dr. Lowry Jones was the authorized treating physician. It is significant that this matter went to settlement hearing on two separate dates, the first being July 23, 1998. At this first hearing, there was confusion regarding claimant's future medical treatment and

who would provide that treatment. As a result, the settlement hearing was continued to October 29, 1998.

On October 30, 1998, claimant contacted her attorney requesting additional medical treatment for her ongoing complaints.

Claimant's request for additional medical treatment was forwarded to respondent by telephone conversation on December 8, 1998. The record does not indicate any action was taken by respondent at that time. On December 29, 1998, claimant provided notice to respondent of a preliminary hearing set for January 5, 1999. On January 4, 1999, conversations between claimant's and respondent's attorneys appeared to resolve the matter, with claimant being scheduled for an examination with Dr. Jones on January 18, 1999.

During the examination by Dr. Jones, claimant requested that she be referred to a pain management clinic. Dr. Jones indicated a pain management evaluation would be proper. However, no referral to the pain management clinic was scheduled by respondent. On February 9, 1999, claimant's attorney corresponded with respondent's attorney and requested a referral to the pain management clinic. Respondent alleges this letter was not received until March 1, 1999.

On March 3, 1999, the claimant's letter was forwarded to respondent's insurance company, apparently again with no action being taken. On March 9, 1999, respondent was provided notice of a second preliminary hearing scheduled for March 23, 1999. On March 22, 1999, respondent indicated they would refer claimant to Dr. Lemons for a pain management evaluation. However, at the preliminary hearing on March 23, 1999, respondent's attorney acknowledged that no actual examination date had been scheduled with Dr. Lemons. Claimant was ultimately examined by Dr. Lemons on April 1, 1999.

K.S.A. 44-536 allows for attorney fees to be paid by the respondent to claimant's attorney "subsequent to the ultimate disposition of the initial and original claim, and in connection with . . . a hearing for additional medical benefits." The director "shall" award attorney fees which are reasonable and customary for the services provided. Respondent's attorney argued before the Board that it was normal in workers' compensation litigation that arrangements such as these would occur at the "11th hour." Respondent further argued that, because of the normalcy of these late arrangements, the attorney fees awarded to claimant's attorney would be no more than unjust enrichment to claimant's attorney, as the system was working as was to be expected.

The Appeals Board rejects this argument. The statutes regulating attorney fees under the Workers Compensation Act were not enacted to benefit the attorney. Rather,

they were enacted to enable claimants to obtain competent counsel. In addition, they are part of a statutory scheme intended primarily to benefit injured workers by securing prompt payment of the benefits provided by the Workers Compensation Act. Hatfield v. Wal-Mart Stores, Inc., 14 Kan. App. 2d 193, 786 P.2d 618 (1990).

In this instance, claimant's attorney was obligated to schedule two separate preliminary hearings. Claimant was not examined by Dr. Jones until January 18, 1999, two and a half months after her initial request to her attorney for medical treatment. Claimant did not obtain a referral to Dr. Lemons for a pain management evaluation until April 1, 1999, two and a half months after her examination by Dr. Jones and five months after her initial request for treatment. While the "11th hour" would make a good title for a mystery novel, it has no place in workers' compensation litigation, especially when dealing with the ongoing medical needs of injured workers.

K.S.A. 44-536(g) mandates that attorney fees awarded by the Director be reasonable and customary when ordered pursuant to requests for additional medical benefits. The only question for the Administrative Law Judge in this instance would be what is reasonable and customary under the circumstances. Claimant's attorney submitted a time sheet showing 5.3 hours attorney time at \$125 per hour. The Administrative Law Judge awarded claimant \$650 which is slightly less than what was requested. In addition, the Administrative Law Judge eliminated any legal assistant time requested by claimant's attorney. The Appeals Board agrees that a reasonable and customary fee in this case would be \$650 for the services provided to claimant prior to the argument to the Board.

In addition, the Appeals Board finds that claimant's attorney expended an additional two hours of time in preparing for and presenting his argument to the Appeals Board. The Appeals Board, therefore, finds it appropriate, under K.S.A. 44-536(g), to award claimant an additional \$250 in attorney fees for the time spent before the Board.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated March 23, 1999, should be, and is hereby, affirmed. In addition, claimant's attorney is awarded an additional \$250 in attorney fees for the time spent preparing for and attending the argument before the Workers Compensation Appeals Board.

Claimant's attorney's request for expenses is denied, as K.S.A. 44-536 makes no provision for an award of expenses.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Keith L. Mark, Mission, KS
Larry D. Greenbaum, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director